AMBRA OIL AND GAS CO.

IBLA 83-112 Decided August 2, 1983

Appeal from Colorado State Office, Bureau of Land Management, decision rejecting high bids for competitive oil and gas leases C-35912 and C-35913.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

   The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record shows a rational basis for the conclusion that the amount of the bid was inadequate.

2. Oil and Gas Leases: Generally--Oil and Gas Leases: Competitive Leases

   Minerals Management Service was the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary was entitled to rely on its reasoned analysis. However, when the Bureau of Land Management relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision.

3. Oil and Gas Leases: Competitive Leases

   Where the high bid in a competitive oil and gas lease sale is rejected as inadequate and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, the decision rejecting the bid may be set aside and the case remanded to BLM for reconsideration.

APPEARANCES: Hugh C. Garner, Esq., and Randy K. Johnson, Esq., Salt Lake City, Utah, for Ambra Oil and Gas Company.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Ambra Oil and Gas Company (Ambra) has appealed the decision of the Colorado State Office, Bureau of Land Management (BLM), dated September 16, 1982, which rejected their high bids of $30.11 per acre for parcel 17 and $45.11 per acre for parcel 18 in a competitive oil and gas lease sale held on June 15, 1982. The only other bids received on parcels 17 and 18 were $22 per acre. Both parcels are located on the Rulison Known Geologic Structure.

BLM found the bids to be inadequate based upon a recommendation, with which BLM concurred, of the Minerals Management Service (MMS) 1/ which had determined that Ambra's bids were significantly below minimum acceptable bid (MAB) values for the parcels. The MMS recommendation was based on an estimate of fair market value which BLM noted had been obtained by MMS's use of comparable sales and a discounted cash flow analysis. 2/ The MMS recommendation stated that several oil and gas leases which were offered in the Federal oil and gas lease sale of July 30, 1981, were within 5 miles of parcels 17 and 18; that MAB values for parcels 17 and 18 were based on comparable sales in the vicinity and the geological summary prepared by MMS; and that the bids received for parcels 17 and 18 were significantly below the MAB values estimated by MMS.

On appeal counsel for Ambra allege that the record fails to disclose an adequate factual basis for the rejection of its bids and that its bids were reasonable and should have been accepted. In support of these allegations, counsel state that BLM failed to consider a number of important factors in rejecting the bids and, considering all relevant factors, the bids were reasonable and should have been accepted. Included as "exhibit B" with the statement of reasons is a letter from the Director, MMS, and various attachments which constituted the MMS response to a Freedom of Information Act (FOI) request made by appellant regarding the rejected bids. 3/ The

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1/ On Dec. 3, 1982, the Secretary of the Interior issued Secretarial Order No. 3087 transferring all onshore minerals management functions of the MMS, not relating to royalty management, to BLM. Notice of the transfer of functions was published in the Federal Register on Mar. 2, 1983. 48 FR 8982.

2/ Correspondence from MMS to BLM, as contained in the record, makes no reference to a discounted cash flow analysis.

3/ In that letter the Director, MMS, states that MMS may withhold the methodology of estimation of fair market values for a tract which has not been leased, citing Pitman v. Department of the Interior, Civ. No. 76-F-1022 (D. Colo. 1977), as authority. Concerning release of minimum bid estimates, such estimates are not subject to presale disclosure under the FOI. However, such is not the situation here. See Pitman v. Department of the Interior, supra; Southern Union Exploration Co., 51 IBLA 89, 93-94 (1980). Appellant's request was made on Oct. 15, 1982, a month after the date of BLM's decision rejecting the bids.

attachments included copies of an Evaluation Summary and a Geological Report, neither of which was part of the case record provided by BLM. The Evaluation Summary describes and lists bid amounts accepted for the leasing of seven oil and gas tracts located in the Rulison field which had been offered in the BLM oil and gas lease sale of July 30, 1981. The Summary notes that two of the leased tracts were located immediately north of parcels 17 and 18. All seven were described as being within 5 miles of the subject parcels. Those amounts listed from the July 30, 1981, lease sale reflect high bid lease values which ranged from $261.75 per acre to $313.13 per acre for the seven listed tracts. 4/ The discussion section of the Summary was deleted by MMS except for the statement that "[t]elephone conversations with various companies knowledgeable of leasing and drilling activities in the area indicate that there has been a reduced interest in the Rulison field, since the BLM lease sale of July 30, 1981." The minimum bonus values for parcels 17 and 18 were also deleted from the Summary. Section IV "Basis for Analysis" of the Summary states that the evaluation approach used in the Summary was "based on analysis of comparable lease sales and the Geological Report." The only further reference in the summary to the Geological Report is a description of the Rulison field. No mention is made of the weight given to the Geological Report.

In the statement of reasons, counsel for appellant suggest factors which should have been considered by BLM before rejecting the bids. Those factors include the accessibility of the property for exploration and drilling purposes, changes in market conditions for natural gas between the July 1981 lease sale and the June 1982 sale, and the location of the parcels vis-a-vis a pipeline capable of carrying any gas produced to market. Appellant argues that, in effect, only the geographical proximity of the parcels sold in 1981 with those sold in 1982 and the comparative high bid values received in 1981 versus those received in 1982 were taken into consideration. 5/

4/ The seven high bids listed from the 1981 lease sale were for parcels 29 through 35 located on public land within the Rulison field as are parcels 17 and 18 for which appellant bid in the 1982 lease sale. No other parcels listed in the 1982 sale were situated in the Rulison field. Other high bids recommended by MMS for acceptance as a result of the 1982 sale, however, range from $10.70 per acre for parcel 9 to $1,261 per acre for parcel 21. The bids accepted in the 1981 lease sale for the two parcels listed as being directly north of parcels 17 and 18 were each $261.75 per acre.

5/ Together with the statement of reasons, counsel for Ambra included an affidavit from a licensed consulting engineer and geologist (Exh. C) which asserts that natural gas market conditions had changed drastically between July 30, 1981, and June 15, 1982. Exhibit D, attached to the statement, is the affidavit of the president of Ambra Oil. He states that parcels 17 and 18 are at least 5 miles from any available natural gas pipeline; that such pipeline is to the north of parcels 17 and 18; that portions of the referenced 1981 tracts used by MMS for comparison are within approximately one-half mile of the existing pipeline.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 6/ 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); Harry Ptasynski, 48 IBLA 246 (1980); Frances J. Richmond, 29 IBLA 137 (1977).

[2] At the time of the evaluation MMS was the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases, and the Secretary, acting through BLM, was entitled to rely on MMS's reasoned analysis. Read & Stevens, Inc., 70 IBLA 377 (1983); Snyder Oil Co., 69 IBLA 259 (1982). However, when BLM relies on that analysis in rejecting a bid a inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Harris-Headrick, 66 IBLA 84, 86 (1982); Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if a competitive oil and gas lease bid is not clearly spurious or unreasonable on its face, the Board has held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. M. Robert Paglee, 68 IBLA 231 (1982); Southern Union Exploration Co., 51 IBLA 149 (1980).

[3] There is nothing in the case file or in the materials provided by MMS pursuant to the FOI request upon which we can determine the correctness of the BLM decision as to the competitive bids or the merits of appellant's arguments. The decision is deficient because it does not reveal the presale evaluations of parcels 17 and 18 and the factual data upon which they were based. Nothing is found in the record concerning a discounted cash flow analysis, even though BLM states that the valuation was based, at least in part, on such an analysis. Nor does the evaluation summary indicate what factors were used by MMS to determine comparability or how the MAB values were calculated. Appellant has raised considerable doubt whether its bids are inadequate, especially in light of the failure of BLM or MMS to set forth in any meaningful manner the basis for the conclusion to reject the bids. This does not mean the Board will substitute its own judgment for that of the Department's experts, but rather that the Board will require sufficient facts and a sufficiently comprehensible analysis to insure that a rational basis for the determination is present. M. Robert Paglee, supra. Accordingly, we remand this case to BLM for readjudication of appellant's bids. In readjudicating the bids, BLM should consider the arguments presented by appellant in this appeal. If the bids are again rejected, BLM shall set forth the reasons for doing so completely, including the presale evaluation, so they may be addressed by appellant and considered by the Board in event of an appeal.

Should the bids again be rejected, and an appeal filed, the record submitted to this Board shall be complete with no omissions, exclusions, or

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6/ Not withstanding difference between the high bids received on seven parcels for the sale held July 30, 1981, and appellant's much lower bids tendered for the June 15, 1982, sale, appellant's bids were not clearly spurious or unreasonable on their face.

deletions of any document or data, and specifically include all actual amounts of pre and postsale evaluations. Should such record contain any information which is prohibited by law from public disclosure, it should be so identified. However, no record of this Department may be treated as immune from Secretarial review on appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded to BLM for action consistent with this decision.

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Bruce R. Harris
Administrative Judge

We concur:

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Gail M. Frazier
Administrative Judge

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R. W. Mullen
Administrative Judge